

JS 44 (Rev. 10/4/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

| | |
|---|---|
| PLAINTIFF(s): <p style="text-align: center;">MARYANN ZINDELL</p> <p>(b) County of Residence of First Listed Plaintiff <u>PHILADELPHIA</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Flitter Lorenz, P.C. 450 N. Narberth Avenue, Suite 101 Narberth, PA 19072 (610) 882-078 2</p> | DEFENDANT(s): <p style="text-align: center;">HARLEY-DAVIDSON FINANCIAL SERVICES, INC. and HARLEY DAVIDSON CREDIT CORPORATION</p> <p>County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p> |
|---|---|

| II. BASIS OF JURISDICTION (Place an "X" in One Box Only) | III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) | | | | | | | | | | | | | | | | | | |
|--|---|-----------------------------------|---|-----------------------------------|---|-----------------------------------|-----------------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | <table style="width:100%;"> <tr> <th style="text-align: left;">Citizen of This State</th> <th style="text-align: center;">PTF <input type="checkbox"/> 1</th> <th style="text-align: center;">DEF <input type="checkbox"/> 1</th> <th style="text-align: left;">Incorporated or Principal Place of Business In This State</th> <th style="text-align: center;">PTF <input type="checkbox"/> 4</th> <th style="text-align: center;">DEF <input type="checkbox"/> 4</th> </tr> <tr> <th style="text-align: left;">Citizen of Another State</th> <th style="text-align: center;"><input type="checkbox"/> 2</th> <th style="text-align: center;"><input type="checkbox"/> 2</th> <th style="text-align: left;">Incorporated and Principal Place of Business In Another State</th> <th style="text-align: center;"><input type="checkbox"/> 5</th> <th style="text-align: center;"><input type="checkbox"/> 5</th> </tr> <tr> <th style="text-align: left;">Citizen or Subject of a Foreign Country</th> <th style="text-align: center;"><input type="checkbox"/> 3</th> <th style="text-align: center;"><input type="checkbox"/> 3</th> <th style="text-align: left;">Foreign Nation</th> <th style="text-align: center;"><input type="checkbox"/> 6</th> <th style="text-align: center;"><input type="checkbox"/> 6</th> </tr> </table> | Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
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| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | |

| IV. NATURE OF SUIT (Place an "X" in One Box Only) | | | | | | | | | | | | | | | | | | | | | |
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|---|---|--|---|--|---|
| V. ORIGIN (Place an "X" in One Box Only) | | | | | |
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation |

| | |
|----------------------------|--|
| VI. CAUSE OF ACTION | Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1681 (Fair Credit Reporting Act) |
| | Brief description of cause: Fair Credit Reporting Act and state law violations. |

| | | | |
|-------------------------------------|--|-----------------|--|
| VII. REQUESTED IN COMPLAINT: | <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 | DEMAND \$ _____ | CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
|-------------------------------------|--|-----------------|--|

| | |
|-------------------------------------|---------------------|
| VIII. RELATED CASE(S) IF ANY | (See instructions): |
|-------------------------------------|---------------------|

| | | |
|---------------------|---------------------------------|---|
| DATE | JUDGE | DOCKET NUMBER |
| 8/23/12 | SIGNATURE OF ATTORNEY OF RECORD | |
| FOR OFFICE USE ONLY | | |
| RECEIPT # _____ | AMOUNT _____ | APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____ |

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

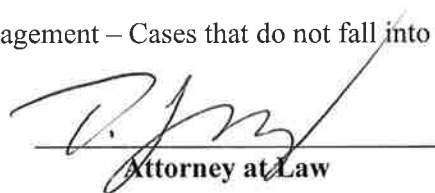
| | | |
|------------------------------------|---|--------------|
| MARYANN ZINDELL | : | CIVIL ACTION |
| v. | : | |
| HARLEY-DAVIDSON FINANCIAL | : | NO. |
| and | : | |
| HARLEY DAVIDSON CREDIT CORPORATION | : | |

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

8/23/12
Date


Attorney at Law

THEODORE E. LORENZ
Attorney for Plaintiff

610-822-0782
Telephone
(Civ.660) 10/02

610-667-0552
Fax Number

lorenz@consumerslaw.com
E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 5345 Eadom Street, Philadelphia, PA 19137

Address of Defendants: 4150 Technology Way, Carson City, NV 89706

Place of Accident, Incident or Transaction: Philadelphia, PA

Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases

(Please specify) Fair Debt Collection Practices Act, 15 U.S.C. § 1692

B. *Diversity Jurisdiction Cases:*

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability (Asbestos)
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, _____, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought

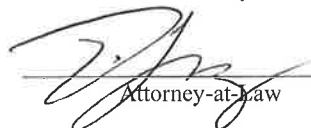
DATE: _____ Attorney-at-Law _____ Attorney I.D. _____

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 8/23/12

CIV.609 (4/03)


Attorney-at-Law

67795

Attorney I.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARYANN ZINDELL
5345 Eadom Street
Philadelphia, PA 19137

Plaintiff,

vs.

CIVIL ACTION NO.

HARLEY-DAVIDSON FINANCIAL
SERVICES, INC.
4150 Technology Way
Carson City, NV 89706

And

HARLEY DAVIDSON CREDIT CORP.
4150 Technology Way
Carson City, NV 89706

Defendants.

COMPLAINT

I. INTRODUCTION

1. On April 4, 2012, Plaintiff's motorcycle was wrongly repossessed by Defendants in front of Plaintiff's home. The Defendants repossession agents and the repo itself caused a scene, with police coming and neighbors watching.

2. Defendants told the repo agent that Ms. Zindell had filed bankruptcy. Plaintiff had not. In Plaintiff's telephone calls with Defendants at the time, Plaintiff explained the payments were current, but Harley Davidson gave her a series of inconsistent and false

explanations for why they were repossessing her car. Plaintiff was not in default; this repo by Defendants was unlawful.

3. As a result of Defendants' conduct at the scene and thereafter, Plaintiff lost her motorcycle – her primary mode of transportation, has suffered injury to her credit, humiliation, distress, and embarrassment, and has spent significant time and aggravation to correct Harley Davidson's accounting blunder.

4. Plaintiff sues under the Fair Credit Reporting Act, 15 USC §1681 and state law for the wrongful possession and invasion of privacy.

III. PARTIES

5. Plaintiff MaryAnn Zindell is a consumer who resides in Philadelphia, Pennsylvania at the address captioned above (hereinafter referred to as "Plaintiff").

6. Defendant Harley Davidson Financial Services is a foreign corporation with a principal place of business in Carson City, Nevada as captioned (hereinafter referred to as "HDFS").

7. Harley Davidson Credit Corporation is a foreign corporation with a principal place of business in Carson City, Nevada as captioned (hereinafter referred to as "HDCC").

8. HDFS and HDCC are collectively referred to as "Harley Credit" or "HC".

IV. FACTUAL ALLEGATIONS

9. On or about March 31, 2007, Plaintiff purchased a 2007 Harley Davidson motorcycle from a Harley Davidson dealership located in Philadelphia, Pennsylvania.

10. Plaintiff financed the purchase of the motorcycle through Harley Credit.

11. Plaintiff made her monthly payments of \$217.84 beginning in May 2007.

12. On April 4, 2012, Harley Credit repossessed Plaintiff's motorcycle.

13. Plaintiff paid on the vehicle loan reliably for some 5 years.

14. Harley Credit failed to properly account for two payments made by Plaintiff, and asserted a default.

15. Harley Credit provided a succession of different, inconsistent allegations of default that led to the repo.

REPOSSESSION

16. As a result of Harley Credit's chronic accounting errors, Harley Credit wrongfully repossessed Plaintiff's motorcycle on April 4, 2012.

17. The repossession was contested by Ms. Zindell who repeatedly told the repo agent and Harley Credit that she was current in payments.

18. Harley Credit did not inform Plaintiff in advance that it was going to repossess her motorcycle. Plaintiff was not in default at the time of the repo such that a repo would be warranted.

19. Harley Credit knew or should have known that it did not have the right to repossess Plaintiff's motorcycle.

20. Defendants acted willfully and in wanton disregard for Plaintiff's contractual and statutory rights.

21. During and after the repossession, Ms. Zindell repeatedly attempted to get the motorcycle back by demonstrating to Harley Credit its flawed accounting. Harley Credit would not oblige, but repeatedly changed its rationale as to why there was allegedly a default and repo.

22. Harley Credit seized Plaintiff's motorcycle and shipped it to Ohio for auction.

23. Upon information and belief, the motorcycle remains in Harley Credit's possession in Ohio.

24. Plaintiff's motorcycle was her primary mode of transportation.

CREDIT REPORTING

25. Harley Credit has and continues to report negative and derogatory information to the credit bureaus about the vehicle loan account, including a large balance due, past due and repossession.

26. Harley Credit is reporting Plaintiff as delinquent on the account, and reporting Ms. Zindell's account as "repossession". Although the motorcycle was technically "repossessed" in the sense that it was seized involuntarily by Harley Credit, there was no actionable default, and no right to repossess under the contract or Pennsylvania law.

27. The reporting of "repossessed" by Defendant to the credit bureaus is inaccurate and misleading.

28. Plaintiff has written to and spoken directly with Harley Credit to dispute its reporting to the credit bureaus, and to request that the false, negative and derogatory reporting be removed.

29. Plaintiff has written to Equifax and Trans Union disputing Harley Davidson's false and inaccurate reporting, requesting a reinvestigation, and requesting that the inaccurate reporting be deleted. The credit bureaus asked Harley Credit to verify.

30. Harley Credit, in response to Plaintiff's disputes to the credit reporting agencies continues to verify its false and inaccurate reporting to the credit bureaus.

31. Pursuant to 15 U.S.C. § 1681s-2(b), a furnisher of information, like Harley Credit, has a duty upon notice of dispute to conduct an investigation with respect to the disputed information and report the results of the investigation to the consumer reporting agency. The investigation must be done reasonably and adequately.

32. Harley Credit failed to conduct a reasonable and adequate investigation or reinvestigation upon Plaintiff's proper dispute to the credit bureaus.

33. Instead of correcting the inaccurate reporting, Harley Credit re-verified it.

34. Harley Credit is still reporting false and inaccurate information about Plaintiff to the credit bureaus.

35. Harley Credit knows from its own records that Ms. Zindell disputes the claim of missed payments, and repo.

36. At all times relevant hereto, Harley Credit knew or should have known that it misapplied or miscounted payments made by Plaintiff, and knew or should have known that it verify false and derogatory information about Plaintiff in connection with the Harley Credit account.

37. Harley Credit willfully and/or negligently failed to properly investigate the credit dispute, Harley Credit refused to remove the inaccurate credit reporting information.

38. As a result of Defendants' willful, wanton, reckless, and/or negligent action, Plaintiff has been damaged.

39. As a result of the false and derogatory information reported by Harley Credit, Plaintiff has been damaged.

40. Plaintiff has spent a substantial amount of time trying to get Harley Credit to conduct a proper accounting, but to no avail. Plaintiff has suffered injury to her credit, been denied credit, and expended significant time and effort trying to address her credit report.

41. Plaintiff has suffered mental anguish, emotional distress, worry, humiliation, and embarrassment as a result of Defendants' actions.

42. As a result of Defendants' statements and actions, Plaintiff has been portrayed in a false and unfavorable light in her community viz., as one not responsible or credit worthy, who deserved to have her motorcycle repossessed.

43. Plaintiff has, to her detriment, been deprived of the use and enjoyment of her motorcycle as a result of Defendants' actions.

COUNT I
(Fair Credit Reporting Act)

44. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

45. Harley Credit has violated the Fair Credit Reporting Act by willfully and/or negligently failing to comply with the requirements imposed under 15 U.S.C. § 1681s-2(b), including the failure to fully and properly investigate Plaintiff's dispute and by failing to correctly report results of an accurate investigation to the credit bureaus.

46. Harley Credit has violated the Fair Credit Reporting Act by willfully and/or negligently reporting false credit information about Plaintiff after being put on proper notice of the inaccuracy.

WHEREFORE, Plaintiff Maryann Zindell demands judgment against Defendants for:

- (a) Actual and compensatory damages;
- (b) Punitive damages;

- (c) Attorney's fees and costs; and
- (d) Such other and further relief as the Court shall deem just and proper.

COUNT II
(Uniform Commercial Code)

47. Plaintiff incorporates the preceding paragraphs as if fully set forth at length.

48. Under Pennsylvania's Uniform Commercial Code, 13 Pa.C.S. §9609 et seq. and the parties' contract, a secured party can repossess a vehicle only in the event of a default under the parties' agreement.

49. Plaintiff was not in default of her contract with Harley Credit.

50. Defendants had no right to repossess and detain Plaintiff's motorcycle, or order it repossessed.

51. As a result of Defendants above-described wrongful acts in repossessing Plaintiff's motorcycle, Plaintiff has been damaged. The motorcycle has still not been returned.

52. Plaintiff has been deprived of the use, enjoyment and value of her motorcycle, and stands to lose the substantial equity in the bike that has arisen from 5 years of payments.

53. The motorcycle is "consumer goods" and Plaintiff is entitled to remedy under 13 Pa. C.S. §9625.

WHEREFORE, Plaintiff, Maryann Zindell respectfully requests that judgment be entered in her favor and against Defendants, jointly and severally, for:

- (a) Damages;
- (b) Interest; and
- (b) Such other relief as the Court may be deem just and proper.

COUNT III
(Fair Credit Extension Uniformity Act)

54. Plaintiff incorporates the preceding paragraphs as if fully set forth at length.

55. By repossessing Plaintiff's motorcycle, Defendants engaged in unfair or deceptive debt collection activity in violation of the Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1, et seq., including:

(a) taking action it was not legally entitled to take in violation of the FCEUA, 73 P.S. §2207.4(b); and

(b) engaging in conduct the natural consequences of which is to harass, oppress or abuse any person in connection with the collection of a debt claimed due, in violation of the FCEUA, 73 P.S. §2207.4(b);

56. As a result of Defendants' conduct, Plaintiff has been damaged and has suffered ascertainable loss.

57. Plaintiff has been deprived of the use, enjoyment and value of her motorcycle.

WHEREFORE, Plaintiff MaryAnn Zindell respectfully requests that judgment be entered in her favor and against Defendants for:

- (a) Damages;
- (b) Treble Damages;
- (b) Reasonable attorney's fees and costs; and
- (c) Such other relief as the Court may deem just and proper.

COUNT IV
(Invasion of Privacy)

58. Plaintiff incorporates the preceding paragraphs as if fully set forth at length.

59. Defendants had no right to repossess Plaintiff's motorcycle.

60. Defendants' wrongful repossession of the vehicle along with the confrontation, the public scene created, the police involvement, the physical seizure of the motorcycle under protest was conducted in full view of Plaintiff's neighbors and friends in the community.

61. Defendants' wrongful repossession was defamatory as to Plaintiff, and placed Plaintiff in a false light.

62. The repossession attempt, the very public, unflattering scene created, the involvement of law enforcement, the forced repossession and physical seizure of Plaintiff's motorcycle onto the truck are individually and collectively defamatory, and intrusive upon Plaintiff's solitude and seclusion.

63. The repossession of a person's vehicle especially in such a disputed and chaotic fashion is highly offensive to a reasonable person.

64. Harley Credit acted willfully and maliciously, and with reckless indifference to Plaintiff's rights and reputation in repossessing her motorcycle.

65. As a result of Defendants' conduct, Plaintiff has been damaged and painted in a false light and invaded her privacy.

66. Plaintiff has suffered humiliation, distress, embarrassment, and loss of reputation and privacy.

WHEREFORE, Plaintiff MaryAnn Zindell respectfully requests that judgment be entered in her favor and against Defendants for:

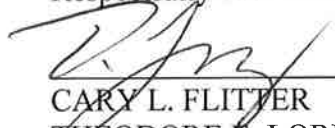
- (a) Actual Damages;
- (b) Punitive Damages; and
- (c) Such other relief as the Court may deem just and proper.

VII. JURY TRIAL

A jury trial is demanded as to all issues so triable.

Date: 8/23/12

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'C. Flitter', is written over a horizontal line.

CARY L. FLITTER
THEODORE E. LORENZ
ANDREW M. MILZ

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